

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

BRIAN MATTHEW MCCALL, KYLE
BIEDERMANN,
Plaintiffs

§
§
§
§
§
§
§
§
§
§

SA-22-CV-00093-XR

-VS-

NANCY PELOSI, SPEAKER OF THE
UNITED STATES HOUSE OF
REPRESENTATIVES; *et al.*;
Defendants

ORDER

On this date, the Court considered Plaintiffs Brian McCall and Kyle Bidermann’s motion for default judgment (ECF No. 19). After careful consideration, the Court **DENIES** the motion.

BACKGROUND

On February 3, 2022, Plaintiffs filed their complaint alleging that Congress had failed to act on an obligation to call a constitutional convention. ECF No. 1. On May 11, 2022, the Court ordered Plaintiffs to show cause that the case should not be dismissed under Rule 4(m) based on Plaintiffs’ failure to show that they had served Defendants. ECF No. 10. Plaintiffs subsequently filed on the docket a number of affidavits of service relating to the individual defendants only—not to the United States Attorney or the Attorney General—and filed a response to the Court’s order. ECF No. 16; *see generally* ECF Nos. 11–15. Plaintiffs have since filed affidavits of service showing that both the Attorney General and United States Attorney have been served. ECF Nos. 17, 18.

On July 20, 2022, Plaintiffs filed a motion for default judgment, arguing that it had been more than 60 days since service upon each of the defendants and that none of the served defendants had entered an appearance or filed a responsive pleading in this case. ECF No. 19.

DISCUSSION

Under Federal Rule of Civil Procedure 4(i), in order to serve the United States, its agencies, officers, or employees, a litigant must deliver a copy of the summons and complaint to (1) the United States Attorney for the district in which the action is brought or to the civil-process clerk at the United States Attorney's office; (2) the Attorney General of the United States at Washington, D.C.; and (3) if the action challenges the order of a nonparty agency or officer of the United States, the agency or officer.

The relevant affidavits of service provided in this case show that the civil-process clerk of the Western District of Texas was served on June 15, 2022, and the Attorney General was served on June 21, 2022. ECF Nos. 17, 18. The United States and its agencies, officers, or employees have 60 days from service on the United States Attorney to respond to a complaint. FED. R. CIV. P. 12(a)(2). Accordingly, Defendants' deadline to file a responsive pleading in this case is August 15, 2022. As such, Defendants are not in default.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for default judgment (ECF No. 19) is **DENIED**.

It is so **ORDERED**.

SIGNED this 27th day of July, 2022.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE